

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

SCI ILLINOIS SERVICES, INC.¹

Employer

And

Case 13-RC-21255

TEAMSTERS LOCAL UNION NO. 727, I.B.T.

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on October 8, 2004, before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.²

I. Issues

Teamsters Local Union No. 727, I.B.T. (herein the Petitioner) seeks an election within a unit comprised of all family service counselors and pre-arranged funeral (PAF) family service counselors employed by SCI Illinois Services, Inc. (herein the Employer). The Employer does business at various locations as Blake Lamb Funeral Home, Humes Funeral Home, Ridge Funeral Home, Marsh Funeral Home, Memorial Park Cemetery, Chapel Hill Garden South Cemetery and Funeral Home, Chapel Hill Gardens West Cemetery and Funeral Home, Evergreen Cemetery, Mount Emblem Cemetery, Rose Hill Cemetery, Mount Vernon Cemetery, and Memorial Gardens.

The parties submitted two issues to be decided by the Regional Director. The first issue in this case is whether or not the petition should be dismissed as premature pursuant to the Board's "expanding unit doctrine." The Employer contends that it is currently in the process of

¹ The names of the parties appear as amended at hearing.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

implementing a new operation that will increase the sales force by about 150 employees and consequently, the current sales force is not a representative complement.

In the event that the Regional Director determines that the expanding unit doctrine does not apply in this case, the second issue is whether the unit petitioned-for, as amended at hearing, is an appropriate unit under Section 9(b) of the Act. The Petitioner asserts that the petitioned-for unit of family service counselors and PAF family service counselors is an appropriate unit. The Employer contends that the only appropriate unit involving any family service counselors must also include community service counselors and PAF community service counselors.

II. Decision

Based on the entire record in this proceeding and for the reasons set forth below, I find that the record establishes that the expanding doctrine applies in the instant case and that there does not currently exist a substantial and representative complement of employees such that an immediate election is warranted.³

Accordingly, IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

III. Statement of Facts

The Employer is engaged in the business of operating funeral homes and cemeteries throughout the Chicago area. The instant case involves the Employer's funeral homes and cemeteries located in Chicago, Oak Lawn, Addison, Waukegan, Skokie, Oakbrook Terrace, Evergreen Park, Elmhurst, Lemont, and Arlington Heights. The Chicago area locations are part of the SCI's major markets central region, which includes Chicago, St. Louis, Kansas City, Wichita, Louisville, Atlanta, Birmingham, Houston, Dallas-Fort Worth, Austin, and San Antonio.

In the operation of its facilities, the Employer employs a variety of employees, including maintenance and groundskeepers, administrators, and sales counselors. The Employer's sales force is comprised of family service counselors, pre-arranged funeral (PAF) family service counselors, community service counselors, and pre-arranged funeral (PAF) community service counselors.

Family service counselors typically work with "at-need" families—when the family has had a recent death and is in need of immediate funeral and burial services—to provide them with products and services they need. They are more commonly associated with a particular cemetery. On any given day, family service counselors report to the location they work out of and follow up on a funeral or burial scheduled for that day. Family services counselors check the grounds to make sure that preparations have been made for the burial and that everything goes correctly during the funeral for the burial. They are also responsible for going through all the records and checking that everything is correct. Family service counselors are responsible for

³ Assuming, *arguendo*, that the unit was not expanding, as explained below, I also find the amended unit petitioned-for is not appropriate.

learning all of the products and services offered by the Employer, educating families on the requirements of the cemetery and writing up sales agreements. They also follow up with families to see if they or other members of the family need any additional products or services. Family service counselors are expected to either punch in daily on a time clock, or keep track of their hours on a time sheet. They work a set schedule, but may work after their scheduled hours depending on what is going on at their particular work location. Family service counselors are paid an hourly wage plus a bonus, a one-time payment that is given when a family service counselor reaches a certain level of sales.

Community service counselors sell funeral services prior to need by contacting families, meeting with them, and presenting families with products and services that the Employer offers, and then writing up the sales agreement. They obtain their leads either by referrals or by telemarketing. Community service counselors do not have set office hours, but rather, come in and leave, as they need. They have offices in funeral homes or cemeteries, but do not work with at-need families. Community service counselors are paid commission from their sales only every two weeks; they are not paid any other wages.

PAF family service counselors and PAF community service counselors perform much of the same duties as the non-PAF counselors.⁴ PAF family service counselors and PAF community service counselors meet with families who desire to purchase complete funeral arrangements and cemetery products and services prior to actual need. One difference is that while family service counselors are typically associated with particular cemeteries, PAF family service counselors are typically associated with stand-alone funeral homes.⁵

All family service counselors and community service counselors report to a sales manager, who reports to the general manager, who then reports to Diane Comer, SCI's market manager of Chicago cemeteries. Sales managers handle the discipline of all family service counselors and community service counselors. The Employer has a progressive discipline policy comprised of a verbal warning, a written warning, followed by termination. Most counselors are typically hired as community service counselors and trained until they learn all of the products and services offered by the Employer. If someone is successful as a community service counselor, then he may become a family service counselor and deal with at-need families, although this transition is not considered a promotion. Family service counselors accrue vacation time same as any other administrative or non-union SCI employee, depending on their length of service with the Employer. They are also eligible for non-union SCI employee health insurance. Community service counselors are generally not eligible for vacation or health care benefits. However, they can become eligible for health insurance if their sales total a certain amount, at which point they receive the benefits same as any other full-time employee.

In January 2004, the senior management for SCI Illinois Services determined that actual sales in Chicago was only about two-thirds of expected sales. As a result, the Employer replaced

⁴ The record does not clearly differentiate between PAF and non-PAF family service counselors and community service counselors. Throughout the record, the PAF and non-PAF counselor positions are discussed in such a manner that the positions appear interchangeable and indistinguishable.

⁵ At the hearing, witness Diane Comer testified that PAF counselors have to be insurance licensed. However, the witness did not go into detail about the requirements of being licensed or why it was necessary.

the market leadership and identified the direction that the Employer needed to take to improve sales. In August 2004, the Employer began applying a sales model that had proven effective and successful in Miami and implementing changes in its sales approach. The new sales model—referred to as the Miami model—had a high degree of emphasis on community service sales. This model also utilized enough family service counselors to meet the needs of at-need families, but at a much lower number than community service counselors.

As part of this new plan, the Employer had meetings in September with its sales management team to discuss contemplated changes. Such changes included shifting community service to a different commission plan and family service to a different kind of wage plus commission plan. More significantly, the plan also included increasing the number of community service counselors from its current eight to more than 150 within the following 10 months, a process that is currently underway. In its efforts to hire about 150 new counselors, the Employer has been advertising counselor positions in newspapers and on Internet search engines, such as Career Builder. At the time of hearing, the Employer was in the process of reviewing 20 resumes that it had recently received and interviewing candidates. Under the expansion plan, the new community service counselors will be responsible for selling both funeral and cemetery pre-arrangements out in the community for multiple locations, as compared to the single locations for which they had previously sold. Under the new plan, the community service counselors will be responsible for gaining leads through seminars with veteran groups and speaking with people regarding the benefits of pre-arranging funeral and burial needs. The Employer's expansion plans include hiring a recruiter/trainer to assist in training the new sales counselors and a manager of community service to whom the sales managers will report.

IV. Analysis

The Board held that the appropriate test for determining an expanding unit is considering whether the present employee complement is substantial and representative. *Laurel Associates, Inc. d/b/a Jersey Shore Nursing and Rehabilitation Center*, 325 NLRB 603, 604 (1998), citing *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676 (1965). There is no definitive rule in what constitutes “substantial and representative” and the Board applies a case-by-case approach, analyzing the relevant factors in each case. The Board generally considers one or more of the following factors to determine whether the existing employee complement is sufficiently substantial and representative to order an immediate election in an expanding unit:

1. the size of the present work force at the time of the representation hearing;
2. the size of the employee complement who are eligible to vote;
3. the size of the expected ultimate employee complement;
4. the time expected to elapse before a full work force is present;
5. the rate of expansion, including the timing and size of projected interim hiring increases prior to reaching a full complement;
6. the certainty of the expansion;
7. the number of job classifications requiring different skills which are currently filled;

8. the number of job classifications requiring different skills which are expected to be filled when the ultimate employee complement is reached; and
9. the nature of the industry.

Toto Industries (Atlanta), Inc., 323 NLRB 645 (1997), citing *Libbey Glass Division*, 211 NLRB 939 (1974); *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676 (1969); *General Cable Corp.*, 173 NLRB 251 (1968).

Upon the record evidence in this case, I find that a substantial and representative complement of employees does not currently exist and an immediate election is not warranted. Therefore, the petition should be dismissed as premature. In making this determination, it is necessary to consider briefly what would constitute an appropriate unit. In the instant case, the inquiry is whether the petitioned-for unit of family service counselors and PAF family service counselors must also include the community service counselors and PAF community service counselor to be appropriate.

The Board's procedure for determining an appropriate unit is to first examine the petitioned-for unit. See, e.g., *The Boeing Co.*, 338 NLRB 152, 153 (2001). The burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Id.*; see also *Phoenix Resort Corp.*, 308 NLRB 826, 827 (1992). A unit is appropriate where employees in the unit have a separate community of interest from other job classifications and in determining this community of interest, the Board examines such factors as wages, hours and working conditions, commonality of supervision, degree of skill and common functions, frequency of contact and interchange with other employees, and functional integration. *Boeing Co.*, 337 NLRB at 153.

The record evidence clearly shows that there is a significant community of interest between the family service counselors and community service counselors.⁶ First, both groups market and sell the same and related products and services to the public. They both share common supervision by the sales managers and general managers and are subject to the same discipline system. Counselors who meet the appropriate criteria are eligible for the same health care benefits offered by the Employer to its non-union employees. The similarities shared by both groups of sales counselors are evidenced in the record by the fact that employees in the past have transferred from family service positions to community service positions, and that employees are often hired and trained as community service counselors prior to working as family service counselors. Although there are some differences between the two sets of positions, such as wage and commission structure and hours of work, the bulk of the evidence presented at hearing requires a finding that family service counselors and community service counselors are functionally integrated such that a unit of only family service counselors would not be appropriate for collective bargaining.

⁶ For the purposes of this discussion, my reference to family service counselors and community service counselors will also include the PAF family service counselors and PAF community service counselors, respectively.

Based on the record as a whole, I find that the Employer has definite; concrete plans to substantially expand its existing sales operation in the Chicago area. It would be premature to impose a bargaining representative on a number of employees hired in the immediate future, based upon the vote of a relatively few currently employed individuals. The Employer's rate of expansion in the future and its determination as to when it will be operating at full capacity is not merely speculative. According to the undisputed record, the Employer's plans dictate more than tripling the current sales force of family service counselors and community service counselors, by a process of hiring at least 15 new community service counselors every month for the next 10 months. The record shows that after the Employer reaches its full complement, no additional job skills or separate job classifications will be added and that the sales force will continue to market and sell the same products and services. The record testimony indicates that the anticipated hiring over the coming 10 months will increase the total employee complement to about 191, approximately 80 percent more than the current employee complement. Accordingly, the present complement cannot achieve the Board's desired balance between the objectives of insuring the goal of maximum employee participation in the selection of a bargaining representative, while not depriving the current employees of immediate representation.

Based on the foregoing, I find that the present complement of employees is not sufficiently substantial and representative to warrant holding an immediate election and that the petition should be dismissed as premature.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **November 17, 2004**.

DATED at Chicago, Illinois this 3rd day of November 2004.

/s/Roberto G. Chavarry

Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606

CATS — Unit – Expanding

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